IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 3717 of 2005

Between:

Dulipala Kanaka Durga, W/o Paleswara

Rao, aged about 44 yrs, R/o Plot No.84,

Tirumal Nagar, Z.T.C. Moulali, Hyderabad.

..... PETITIONER

AND

1. The District Co-Operative Officer,

Hyderabad (Urban District)

2. M/s The Prudential Co.Op Bank Ltd.,

Regd. (1424) Under A.P.Mutually Aided

Co-Op.Societies Act, having its Regd.Office

At R.P.Road, Secunderabad, reptd. By its

Liquidator. (As per the Hon'ble Court's direction dt.25.02.2005)

3. The Sale Officer, M/s The Prudential Co.Op Bank Ltd.,

Regd. (1424) Under A.P.Mutually Aided

Co-Op.Societies Act, having its Regd.Office

At R.P.Road, Secunderabad,

4. The A.P. Co-Operative Tribunal, Hyderabad,

reptd. By its Secretary.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more particularly in the nature of writ of mandamus, declaring the issuance of sale notice dated 12.02.2005 by the 3rd respondent in E.P.No.289 of 2003 PCB in O.P.No.658 of 2001 on the file of the A.P. Co-Operative Tribunal, Hyderabad, without awaiting the decision in I.A.No.1330 of 2004 in O.P.No.658 of 2001 as illegal and arbitrary.

Counsel for the Petitioner: MR.S.V.BHATT

Counsel for the Respondents 1 & 4: GP FOR COOPERATION

Counsel for the Respondents 2 & 3: ASHOK ANAND KUMAR, STANDING COUNSEL

The Court at the stage of admission made the following:

ORDER:

The petitioner secured certain amount as loan from the second respondent-bank, which is now said to be under liquidation. The second respondent filed O.P.No.658 of 2001 before the A.P. Co-Operative Tribunal, Hyderabad, the fourth respondent, for recovery of the amount. An exparte order is said to have been passed on 30.01.2003 against the petitioner. On coming to know the same, the petitioner filed I.A.No.1330 of 2004 under Order-IX Rule-13 C.P.C., together with an application under Section-5 of the Limitation Act. The application under Section-5 of the Limitation Act is said to have been allowed on deposit of Rs.1,00,000/-. The enquiry into I.A.No.1330 of 2004 is in progress. The petitioner complains that even when the interlocutory application is pending, the respondents 2 and 3 are proceeding with to sell his property.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondents 2 and 3.

As of now there exists an ex parte decree against the petitioner. He filed an application under Order-IX Rule-13 C.P.C. From the submissions made by the learned standing counsel for the respondents, it is evident that the arguments in the said interlocutory application are concluded and the orders are to be pronounced.

Therefore, this Court does not feel it proper to express any opinion as to the result that is to ensue in I.A.No.1330 of 2004. If the tribunal accepts the contentions of the petitioner and sets aside the ex parte decree, the grievance of the petitioner stands redressed. On the other hand, if the application is rejected, the petitioner has to work out his remedies elsewhere. Either way, the auction, which is now proposed to be held on 28.02.2005, cannot be proceeded with at this stage. This Court is of the view that ends of justice would be met if the proposed auction is deferred by one week.

The writ petition is accordingly disposed of directing that the auction proposed to be held on 28.02.2005 in relation to the property of the petitioner shall be deferred by one week and the further steps shall depend on the out come of the orders that may be passed by the tribunal in the pending applications. No order as to costs.

25.02.2005

DR

To

1. The District Co-Operative Officer,

Hyderabad (Urban District)

2. The Liquidator, M/s The Prudential Co.Op Bank Ltd.,

Regd. (1424) Under A.P.Mutually Aided

Co-Op.Societies Act, having its Regd.Office

At R.P.Road, Secunderabad..

3. The Sale Officer, M/s The Prudential Co.Op Bank Ltd.,

Regd. (1424) Under A.P.Mutually Aided

Co-Op.Societies Act, having its Regd.Office

At R.P.Road, Secunderabad,

4. The Secretary, A.P. Co-Operative Tribunal, Hyderabad,

5. Two C.Cs to Government Pleader for Co-Operation, High

Court Buildings, Hyderabad. (OUT)

6. Two C.D copies.